MONTANA LEGISLATIVE HISTORY

Chapter 534 19 75

Bill H 684 S _____ Original bill & history ✓ C

H. Committee on Business & Industry			S. Committee on Business & Industry		
Hearing Date(s)	Feb 24	✓ C	Hearing Date(s)	Mar 14	✓ C
		C		Mar 15	✓ C
		C		Mar 17	✓ C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LC 1382

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO EMINENT DOMAIN LAWS; PROVIDING A MORE FAIR AND EQUITABLE METHOD OF TREATING THE DEFENDANT PROPERTY OWNER IN SUCH PROCEEDINGS; AMENDING SECTIONS 93-9901, 93-9908, 93-9910, 93-9912, 93-9913, 93-9917, AND 93-9920, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 93-9901, R.C.M. 1947, is amended to read as follows:

"93-9901. Eminent domain defined. Eminent domain is the ~~right~~ privilege of the state to take private property for public use. This ~~right~~ privilege may be exercised in the manner provided in this chapter."

Section 2. Section 93-9908, R.C.M. 1947, is amended to read as follows:

"93-9908. The complaint and its contents. The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners, mortgagees and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the ~~right~~ privilege of plaintiff.

4. If a right of way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right of way for the purposes of sewerage is made on behalf of a settlement, or town, or a county, the county commissioners of the county may be named as plaintiff.

6. If a sand, stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir.

INTRODUCED BILL

In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in section 60-804."

Section 3. Section 93-9910, R.C.M. 1947, is amended to read as follows:

"93-9910. Who may defend--answer of defendant. All persons named in the complaint, in occupation of, or claiming an interest in, any of the property described in the complaint, or in the amount to be awarded for the taking thereof, though not named, may appear. The answer of each appearing defendant must be filed and served upon the plaintiff, or upon any attorney for plaintiff, within a period of ~~fifteen-(15)~~ twenty (20) days after the service of summons and complaint. The answer of each appearing defendant must contain a specific allegation as to the total amount which such defendant claims is reasonable and just

for the taking of such defendant's lands or other real property or interest therein."

Section 4. Section 93-9912, R.C.M. 1947, is amended to read as follows:

"93-9912. Appointment and meeting of commissioners. Immediately upon making and entering the preliminary condemnation order the judge must meet with the respective parties, or their attorneys of record, for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The court must thereupon appoint three (3) qualified, disinterested condemnation commissioners. One of such commissioners shall be nominated by the party or parties plaintiff; one of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two (2) commissioners previously nominated, provided, however, that if said two (2) commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge. Each commissioner shall possess the following qualifications: a citizen of the United States and over eighteen (18) years of age; that he is not more than seventy (70) years of age; that he is in possession of

natural faculties, of ordinary intelligence and not decrepit; that he is possessed of sufficient knowledge of the English language; that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending; that he has not been convicted of malfeasance in office, or any felony or other high crime; that he is not related within the sixth degree to any party; that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent, or partner or surety as to any party. At the time of such meeting and nominations there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows: that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants; and that he has no enmity against or bias in favor of any party and has not discussed, communicated or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded or to be awarded; that if selected as a condemnation commissioner he is willing to serve and will well and truly try the issues of compensation and a true decision render according to the evidence and in compliance with the

instructions of the court; that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

Immediately upon such nomination and appointment of commissioners the same shall proceed to meet at the time and place stated in the order appointing them, which time shall be not more than ten (10) days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within said ten (10) day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land. Such hearing shall be attended by, and presided over by, the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence. At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings and the instructions of the court, the following:

1. The value of the property sought to be appropriated and all improvements thereon pertaining to the realty, and of each and every separate estate and interest therein; if it consist of different parcels, the value of each parcel

and each estate or interest therein must be separately assessed.

2. If the property sought to be appropriated constitutes only a part of a larger parcel, the depreciation in value which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

~~3.--Separately,--how--much-the-portion-not-sought-to-be condemned,-and-each-estate--or--interest--therein,--will--be benefited,---if---at---all,---by--the--construction--of--the improvements-proposed-by-the-plaintiff,-and-if--the--benefit shall--be--equal-to-the-amount-assessed-under-subdivision-2, the-owner-of-the-parcel-shall--be--allowed--no--compensation except--the--value-of-the-portion-taken,-but-if-the-benefits shall-be-less-than-the-amount-assessed-under-subdivision--2, the--former--shall--be--deducted--from--the--latter,-and-the remainder-shall-be-the-only-amount-allowed--in--addition--to the-value.~~

~~4~~ 3. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

~~5~~ 4. Where there are two (2) or more estates or divided interests in property sought to be condemned, the plaintiff

is entitled to have the amount of the award, for said property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein; thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly."

Section 5. Section 93-9913, R.C.M. 1947, is amended to read as follows:

"93-9913. The date with respect to which compensation shall be assessed. For the purpose of assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in value of property not actually taken, but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of highways under the provisions of any legislation enacted pursuant to the Federal Highway Beautification Act of 1965. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw the highest lawful interest from the date on which the property owner surrenders possession of the property in

accordance with the terms of such order to ~~the--earlier--of the-following-dates:~~

~~(a)--The--date--on--which--the--right--to-appeal-to-the Montana-supreme-court-expires,-or-if-appeal-is-filed,-to-the date-of-final-decision-by-the-supreme-court,-or~~

~~(b)-The~~ the date on which the property owner withdraws from court the full amount finally awarded.

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue ~~to the-earlier-of-the-aforesaid-dates-defined-in-(a)-and-(b)-of this--section~~ until the full amount is withdrawn from the court. ~~None--of--the--amount--finally--awarded--shall--draw interest--after-the-date-on-which-the-right-to-appeal-to-the Montana-supreme-court-expires.~~ No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation."

Section 6. Section 93-9917, R.C.M. 1947, is amended to read as follows:

"93-9917. Payment of damages or deposit of bond therefor. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed~~,. but-may,-at-the~~

~~time-of-or-before-the-payment,-elect-to-build-the-fences-and cattle--guards,--and,--if--he-so-elect,-shall-execute-to-the defendant-a-bond,-with-sureties-to-be-approved-by-the-court, in-double-the-assessed-cost--of--the--same,--to--build--such fences--and--cattle-guards-within-eight-months-from-the-time the-railroad-is-built-on-the-land-taken,-and,-if--such--bond be--given,--need--not-pay-the-cost-of-such-fences-and-cattle guards.-In-an-action-on-such-bond,-the-plaintiff-may-recover reasonable-attorney's-fees.~~ All fences and cattle guards shall be built and maintained by plaintiff at his own expense. Damage occurring to any person or property that results from plaintiff's failure to comply with this section shall be paid by plaintiff to the injured person, or owner of the damaged property."

Section 7. Section 93-9920, R.C.M. 1947, is amended to read as follows:

"93-9920. Putting plaintiff in possession. ~~At-any-time after-the-filing-of-the-preliminary--condemnation--order--or after--the--report--and-assessment-of-the-commissioners-have been-made-and-filed-in-the-court,-and-either-before-or-after appeal-from-such-assessment,-or--from--any--other--order--or judgment--in-the-proceedings,-the-court-or-any-judge-thereof at-chambers,-upon-application-of-the-plaintiff,--shall--have power--to-make-an-order-that-upon-payment-into-court-for-the defendant-entitled-thereto-of--the--amount--of--compensation~~

claimed by the defendant in his answer or the amount assessed, either by the commissioners or by the jury, as the case may be, the plaintiff be authorized, if already in possession of the property of such defendant sought to be appropriated, to continue in such possession, or, if not in possession, that the plaintiff be authorized to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation, and that all actions and proceedings against the plaintiff on account thereof be stayed until such time, provided, however, that where an appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff, before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking, with sufficient sureties, to be approved by the judge and to be in such sum as the court or judge may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

The amount assessed by the commissioners, or by the jury on appeal, as the case may be, shall be taken and

considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated, but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed, or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment, but may appeal in the same manner and with the same effect as if no money had been deposited or security given, and in all cases where the plaintiff deposits the amount of the assessment and continues in possession, or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court, all or any part of the money so deposited, and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment, but may, notwithstanding, take and prosecute his appeal from such assessment, provided, that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be

~~recovered by action, and, provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the court shall not order the delivery to any defendant of more than seventy-five (75) per cent of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of seventy-five (75) per cent, with sureties to be approved by the court, to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings.~~ Plaintiff shall not be put in possession until final determination of value of condemnation is made and defendant is paid in full, including all expenses of litigation. Litigation expenses for both parties shall be paid by plaintiff. Defendant is entitled to payment for each day spent in court in an amount equal to the daily rate of the highest paid person in plaintiff's organization."

Section 8. There is a new R.C.M. section numbered 93-9945 that reads as follows:

93-9945. Property damage. All claims for damage, to property of defendant or defendant's agents, tenants, lessees, or other persons with an interest in defendant's property by plaintiff or plaintiff's agents or contractors, shall be paid in full before plaintiff may utilize the

condemned property for any use. Interest, at the rate of one and one-half percent (1 1/2%) per month, shall accrue to the damaged party from thirty (30) days after the date of damage.

Section 9. There is a new R.C.M. section numbered 93-9946 that reads as follows:

93-9946. Future damage to defendant's adjacent property. Plaintiff is liable to defendant for damage to defendant's real or personal property which occurs as the result of an action by plaintiff, or an agent, contractor or servant of plaintiff in utilizing the condemned land.

Section 10. There is a new R.C.M. section numbered 93-9947 that reads as follows:

93-9947. Other persons entitled to compensation. A person, not defendant, owning property within a reasonable distance of the property condemned under eminent domain who suffers damages to realty or personalty as a result of plaintiff's use of the condemned property is entitled to compensation for that damage.

Section 11. There is a new R.C.M. section numbered 93-9948 that reads as follows:

93-9948. Nonliability. The owner of condemned property, his agents and assigns are not liable at any time for their acts which result in damage to the condemning parties' property unless those acts are willful, wanton, or

intentional.

-End-

BUSINESS AND INDUSTRY COMMITTEE

February 24, 1975

The meeting of the Business and Industry Committee was called to order this date, at 10:30 A.M., with Chairman Shelden presiding. All members were present, with the exception of Rep. Harper; however, Rep. Harper did come to the hearing at 12:00 P.M.

The following bills were before the committee for consideration.

HB 684...Rep. Wolfe, sponsor, gave a summary of the bill, explaining each section and change in the bill, and the need for same. He stressed that the most important part of his bill was found on page 10, beginning on line 17. This portion of the bill makes the condemning party pay in full, and pay all legal costs, defendent's time, and the court costs, if any. Rep. Wolfe said that the condemning party could always find a reason for going to the Supreme Court, and that this could break the land owner.

Rep. Wolfe read Rep. Gunderson's statement, as Rep. Gunderson was unable to be at the hearing, but wished to testify as a proponent to this bill.

Rep. Gunderson's statement told of his experience with power poles being strung across his land, and said that the bill was a start in the right direction. His statement ended with the statement, "eminent domain laws should justify the land owner".

Donald A. Douglas, representing the Department of Highways, testified as an opponent, and his testimony is attached hereto.

Blake Keithley, a private citizen, said that if a company did make an offer, and if that offer wasn't accepted, then the person should go without. Mr. Keithly testified further that the land was appraised and that should be the amount paid to the land owner without question, and he opposed the bill.

W. T. Boone, an attorney, was not representing anyone but himself, and testified as an opponent to the bill, saying that the bill was unconstitutional; he referred to parts of the bill as he testified, pointing out the areas to which he objected. Mr. Boone said he was an experienced lawyer in this area and had handled many eminent domain cases, and was very familiar with the present law regarding this matter. He said this bill would force condemnation to be handled under federal laws. He further said, that a federal judge could have a commission, instead of a jury and whatever the commission ruled, would be the final say in the matter. Mr. Boone urged the members to consult their private attorneys regarding this bill, as it would be drastic if it passed as it was now written.

John Potter, representing the Meagher County Newlon Creek Water District, testified as an opponent to this bill. Mr. Potter said he was concerned regarding the litigation procedure in the bill; he said it was not always a large company who was

doing the condemning; sometimes it was a private small land-owner, and he urged the members to consider the effect this could have in all the different areas, and the far-reaching effects it would have on small farmers and ranchers.

Gene Phillips testified as an opponent to this bill also. He said that the Pacific Power and Light Company has never had a condemnation suit and has never condemned any property. Mr. Phillips said he was now the attorney for the Flathead County Air Port Board, and a condemnation suit that started in 1969 was still not settled, and how could you possibly pay for the time in this case. Mr. Phillips said he agreed with Mr. Boone's testimony that this bill was unconstitutional and should not be considered in its present form.

Lester Loble, II, testified as an opponent to HB 684; He said the bill was just horendous, and that the costs would be so enormous if a company was forced to pay all that the bill proposed. He said he agreed with the testimony of the other opponents.

Bob Gannan, representing Montana Power Company,testified as an opponent; he just said he concurrs with the testimony of the other opponents.

John McDonald, representing Mountain Bell, testified as an opponent to this bill also. Mr. McDonald spoke briefly regarding the testimony of the other opponents.

Kenneth G. Bolton, a private citizen and a land-owner, testified as a proponent to HB 684. He said he personally knew of cases where people's land was condemned and they lost money during the transaction because of the present law being what it it. He said land-owners should be dealt with fairly and be able to get fair payment without hiring lawers.

Rep. Wolfe, in closing, again stressed the need for a change in the present law regarding eminent domain; he said he would be agreeable to some changes in the bill, as to wording and language.

Questions and discussion followed, with the members asking the attorneys and Rep. Wolfe various points previously discussed. Mr. Tippy, answered some of the questions regarding some of the wording in the bill also. It was ultimately decided that the bill did need some changes and a subcommittee was appointed by the Chairman, consisting of Rep.'s Aageson, Bradley and Wolfe; the hearing would resume again after session on this date, at which time the subcommittee would have proposed amendments to the bill.

HJR 62...Rep. Richards, sponsor, testified regarding his reasons for introducing this resolution. He said it was a well known fact that the large fossil fuel companies contributed large amounts of money to various state and national political campaigns.

Rep. Richards said that the national energy policies have taken a turn for the worse, and that we should at least let them know that we are aware of what is going on; he had no hopes of any major decision being changed over this resolution, but said it would be well to let the people and policy-makers in Washington know that we are not being fooled-that we do know what's going on.

Rep. Richards further said there was no action to keep prices down-no anti-trust action has been taken. He said the large companies have taken over the control of coal, oil, uranium, geo-thermal and all other forms of energy sources. Rep. Richards said there should be more research into the areas of wind power and other alternative areas. He said all of the policy making regarding our energy is made with selfish interests on the large companies' part, and that the policies regarding Montana energy sources was being dictated by these same individuals. Rep. Richards said Montana was a national sacrafice area, and said he was elected because he asked questions.

Rep. Duane Johnson, also a proponent for this resolution, testified. He stressed his agreement with Rep. Richards relative to our energy policies. Rep. Johnson said this was the one way we could at least express our feelings about the energy policies, and he felt that this resolution would have an impact at this time. He said it was time that this legislature expressed their feelings regarding these matters, and further said it was time that we were told the truth of what is happening in this country. Rep. Johnson said we have had thirty years of cartel to the disadvantage of the citizens of this country, and that he sincerely believed that this bill should get 150 votes in the State Legislature.

The following action was taken by the committee:

HJR 62...Rep. Fabrega moved the resolution DO PASS AS AMENDED. That motion carried unanimously. Amendments were:

1. Amend page 1, line 23; following: "of", insert: "energy conservation and/or"; 2. Amend page 2, line 12. Following: "to", strike: "the Montana congressional delegation", and insert: "every member of the United States Congress".

The meeting was recessed until 7:40 P.M. of this date. HB 684 was again considered with the proposed amendments offered by the subcommittee. The committee considered HB 684 and it was moved that this bill AS SO AMENDED WITHOUT RECOMMENDATION and be reported out of committee. The vote revealed that the committee voted YES, with the exception of Rep. Casey, who voted NO; Rep.'s Fagg and Quilici were absent at this time.

The meeting adjourned at 8:30 P.M.

zd

Arthur H. Shelden

ARTHUR H. SHELDEN, Chairman

ROUGH DRAFT

PROPOSED AMENDMENTS TO HOUSE BILL 684

1. AMEND page 3, section 3, line 22.
   Following: "period of"
   Delete: "twenty (20)"
   Reinsert: "fifteen (15)"

2. AMEND page 8, section 5, line 24.
   Strike: "the highest lawful"
   Following: "interest"
   Insert: "at the rate of one and one half percent (1 1/2%) per month,"

3. AMEND page 9, section 5, subsection (b), lines 6 and 7.
   Following: "date on which"
   Strike: "the property owner withdraws from court"

4. AMEND page 9, section 5, subsection (b), line 7.
   Following: "amount ~~fully~~ finally awarded "
   Insert: "is available in the court to be withdrawn by the defendant "

5. AMEND page 9, section 5, subsection (b), line 13.
   Following: "full amount is"
   Strike: "withdrawn"
   Insert: "available for withdrawal"

6. AMEND page 10, section 6, line 9.
   Following: "~~All fences and cattle~~ guards"
   Insert: "necessitated by the condemnation action,"

7. AMEND page 10, section 6, line 10.
   Following: "shall be built"
   Insert: "as soon as feasible,"

8. AMEND page 13, section 7, line 12.
   Following: "Plaintiff"
   Strike: "shall"
   Insert: "need"

9. AMEND page 14, section 9, line 9.
   Following: "defendant's"
   Strike: "real or personal"
   Insert: "adjacent"

10. AMEND page 14, section 11, line 22.
    Following: "The owner of"
    Insert: "property adjacent to"

ns

FORM 4 A

INTER-DEPARTMENTAL MEMORANDUM

DEPARTMENT OF HIGHWAYS

To James R. Beck, R/W Attorney

Date February 20, 1975

From Donald A. Douglas, R/W Attorney

Subject H.B. 684 Comments

The change in description from "right" to "privilege" of the power of eminent domain does not appear to materially change the process of eminent domain as utilized by this Department. No further comment will be made on Section 1 & 2 of the bill.

Section 3 of the bill does have the effect of extending by five days the time between service of process and ultimate possession of the condemned land, but in light of following sections, this delay is miniscule.

Section 4 of the bill would deprive the people of Montana of the advantage of offsetting benefits conferred by the improvements constructed. While such benefits are not common in this Department's experience, they have and do occur when access by the improvement is provided to formerly isolated lands, or highway frontage is increased or otherwise improved such as by bringing the highway to grade with abutting lands. Other such benefit occurs where the Department's improvements include a high quality, state maintained boundary fence in cases where our taking is along the area where owners abut each other. Other condemnors may provide by their improvements more dramatic benefits. The Newlin Creek water storage project in Meagher County comes most readily to mind. There easements were taken for a lake which resulted in damage to the cattle carrying capacity of the owner's remainder, but said owner was

Avoid Verbal Instructions

benefited by the conversion of part of his remainder from grazing land to high value lakefront property.

Section 5 of the bill contains basically two revisions of existing law, the first as to the rate of interest and the second as to the time period the rate applies.

These amendments are quite confusing in light of Section 7 of the bill where the right of possession upon deposit of the amount demanded in the answer is to be repealed. Under Section 7 of the bill, there can be no delivering of possession to the condemnor by the Court until "final determination of value of condemnation is made and defendant is paid in full." Section 5 of the bill treats the matter of interest running from a Court order putting the condemnor in possession to a time of final determination and payment before which the condemnor cannot be put in possession by such order. (Can the owner postpone indefinitely the Court's granting of possession by refusing to withdraw a part of the compensation deposited for him with the Court?)

The second amendment proposed in Section 5 would, read above, seem to encourage a defendant to leave a deposit with the Court indefinitely at a 10% interest rate or such higher rate as the legislature may authorize.

Section 6 of the bill does not appear to be of immediate concern to this Department as it relates to railroad right-of-way exclusively, but where were are in the process of obtaining land to relocate a

railroad, it's tougher.

Section 7 of the bill works the most serious potential detriment to the objectives of this Department as the legislature has heretofore created them. The first potential is, of course, the dramatic change in availability of the lands for the condemnor's purposes. Only by sacrifice of rights of appeal can the condemnor hope at all to procure property in a reasonable time, and then only if the landowners does not appeal. It is highly conceiveable that acquisition of possession under eminent domain could be transformed from the present maximum of a few weeks to a period of not less than a year or more. The "ripple" effect of such delay occasioned in the acquisition of a key portion of the property needed for an improvement could jeopardize not only the project of which it was a part but the entire system of which the project was a part. This is brought on by the effect of our Financial District Law and the several Federal Aid Highway Acts which provide for cooperative financing. As you are aware the coordination and long range programming of highway system improvement is now a complex and demanding task. Estimates of time for all phases of such planning could be made impossible by this bill. Estimates of right-of-way expenses for such planning could be equally affected, which brings up the second potential.

Increased cost is a necessary effect of Section 7. The Constitution and statutes now provide for the payment of defendants' litigation expenses only in the instance where the defendant secures an award in excess of the condemnor's offer of settlement. The proposed amendment (if presumed to be Constitutional) would require payment

of such expenses in all cases. The addition of compensation for a defendant's time spent in Court could well amount to $50.00 per hour if measured by the rate of the State of Montana highest paid Assistant Attorney General.

Section 8 of the bill imposes a further delay in utilization of condemned property contingent on the settlement of (presumably valid) tort claims. Avoidance of such delay could only be achieved by payment of claims and sacrifice of the right to contest the validity of such claims and the amount of damages. It is unclear in Section 8 whether this new legislation would or would not be limited to tort claims arising before a Court Order putting the condemnor in possession. I assume that it refers only to such claims arising before such order of possession, but if it were interpreted otherwise, repeated shut-downs could occur in the course of construction which would make orderly progress impossible.

Section 9 of the bill does not clearly limit liability to tort liability contemplated by our present Tort Claims Act. Nor does this section clearly limit liability to present standards for inverse condemnation. As it is a new section, presumably it treats something different than what is contemplated as depreciation by Section 93-9912, R.C.M. 1947. It speaks of "future" damages without saying "subsequent" to anything. Liability is imposed upon a condemnor for damage occurring as a result of certain use of the condemned land by parties connected with the condemnor. Interpreting the language used by resort to the common meaning of the words contained could lead to the conclusion that the State could be

liable in damages to an abutting defendant years later should a state contractor in another area accidentally damage property owned by a former condemnee abutting the highway. The vagueness of the language provides no limit to the possibilities and the effect is to make the State an insurer of its contractors on projects or activities wholly unrelated to the use of condemned lands. The fiscal impact is, of course, impossible to predict.

Section 10 of the bill is equally unclear. There is no standard in this section to measure distance eligibility for the contemplated compensation nor the type of damage eligible. The concept of "dammum absque injuria" may be destroyed.

Section 11 of the bill is more vague than any of the other sections. Who is the eventual owner of condemned property? Usually it is the plaintiff. What is the purpose of legislation excusing a plaintiff from liability for damage to his own property? If the "owner of condemned property" means the defendant in the action wherein the condemnor obtains property, is he to be forever excused from liability for negligent damage to all of the condemning authority's property? May he be excused from negligently setting fire to a state forest because a part of his lands hundreds of miles away were once condemned for a state highway? The plain meaning of the words says he may. Does the buyer of the fee underlying an easement condemned by the State for an irrigation channel enjoy immunity from suit when he negligently damages a State vehicle?

Generally, there arise throughout Section 9, 10, & 11 of the bill serious questions as to their constitutionality when tested under the equal protection clause. The treatment of an owner of land who is a defendant in a condemnation action is accorded to him solely because he is a defendant in such action. There does not appear to be any rational basis for this special treatment as opposed, for example, to the treatment afforded an owner who voluntarily sells his land to an entity with the power of condemnation.

Should this bill become law, this Department has an alternative method of acquiring some right-of-way through eminent domain in cooperation with the Federal government. Congress has contemplated situations involving federally aided State projects where the delay in obtaining rights-of-way would necessitate resort to acquisition by the Federal government rather than the non-federal cooperation as is usual. In the case of the Department of Highways, as you are aware, some of our federally aided projects could be referred to the Federal Highway Administration for acquisition through Federal Court and under Federal procedures. In Federal acquisition, possession may be obtained upon deposit of the agency's estimate of just compensation and serving the landowners with the order obtained from the Federal judge at the time of the deposit. In my experience as an attorney in Federal condemnations and, I am advised by an attorney currently handling condemnation for the U. S. Department of Justice in Montana, presently the Federal judge usually appoints three commissioners, (at least one of whom must be a lawyer under Federal

rules) to hear evidence and fix just compensation after the possess- is granted to the condemnor. These commissioners are usually from outside the area of the project for which the land is sought. For example, on the Libby Dam Project in Lincoln County the commissioners were from Beaverhead, Ravalli and one other county far removed from Lincoln County. There is no appeal from the Judge's decision to have the value determined by commissioners. After the commissioner's file their report on damages, the parties may have their report reviewed by the Judge, but the Judge may not grant a trial de novo on the question of damages before a jury. The Judge may find evidence to support their findings and that they were not arbitrary or capricious and sustain their findings. He may find error in their report and remand it to them with instructions for correction. The report, once accepted by the Judge, fixes just compensation. The Judge's decision may be appealed to the Circuit Court in San Francisco, but the Circuit Court's choices are limited to sustaining the local Judge or sending the case back with instructions, they cannot change the amount. The landowner gets neither attorney fees or other costs of litigation.

Because of the tremendous changes in existing law contemplated by this bill, repeated resort to our Supreme Court for interpretation should be anticipated in the event of its passage and approval. As you recall, over 83 years passed under the 1889 Constitution. and all of the questions on eminent domain were not answered. We

are now in the midst of appeals under the 1972 Constitution. This bill, should it become law, could burden our Courts, both Federal and State, to a much greater extent.

Further, on the potential fiscal impact, it should be remembered that our Federal share of costs are based on the traditional concepts of just compensation.and the Federal sources will not participate in elements of compensation beyond those traditional concepts. For example, they provide no funds for interest payments, landowner attorney fees or costs of litigation, landowner court time payment, or payments to "other persons entitled to compensation." Should the assessment of compensation for traditional concepts be comingled with with added elements, they will only participate in the amounts that we can demonstrate is based on traditional concepts. This, for all practical purposes, means the amount of State's appraisal approved by them before condemnation even though a jury may have based their verdict on the traditional concepts but on higher values for those traditional elements.

Donald A. Douglas

NAME Emil L. Falk Bill No. HB 684

ADDRESS Wordon Mont Date Feb 27, 1985

WHOM DO YOU **REPRESENT?** Self - as a land owner.

SUPPORT ✓ **OPPOSE** _____ AMEND _____

PLEASE LEAVE **PREPARED STATEMENT** WITH SECRETARY.

Comments:

Land owners have land or rights removed from them forever for very unfair compensation.

Land that they have payed taxes on for in some cases generations.

The compensation is based on a one time bases even in reality To the land owner it is forever.

If someone benefits for ~~an unapproved~~ an extended length of time from condeming land/or right-of-way then that benefit should be figured into price of this right-of-way.

Emil L Falk

jobs in the wood product industry. All major companies are making major cutbacks. If the state is going to spend money they should create jobs with it. Tom Windsor, Montana Chamber, stated that the amendments on page 2, 3, and 4 are excellent. The people in Montana should be aware of the adverse effects in the changing world. There is no discription at all in the bill however, stating how large this division would be so we do not know how much it would cost to set it up. In closing, Representative Bradley stated that this new division would help other agencies become more effective. Representative Johnson supported the bill. He stated that this bill is one of the most serious concerns he has seen in the legislature this year. The state has always been dependant on its jobs and corporations. We have to find some alternatives to this kind of economy. A brief discussion period followed with questions from the Committee.

House Bill 684: Representative Wolfe, chief sponsor, presented the bill to the Committee. This bill would relate to eminent domain laws; providing a more fair and equitable method of treating the defendant property owner in such proceedings. He futher stated that it would change the condemnation laws. Representative Wolfe then went through the bill and explained the amendments that were made in the House committee. The amendment on page 15 section 11 is very important. It relieves owners from liability of property structure and the condemers have to pay what the property is really worth. Jim Beck, attorney, opposed the bill. He stated that the section on highway programming is a big change and affects the Highway Department. The Department may deposit the total amount of damages or they may wait and deposit the amount the judge awards. Don Douglas, Highway Department, opposed the bill. Prepared statement attached. W. T. Boone, stated that he has represented many people in court on cases of condemnation. The provision you have here is meaningless. He asked that the Committee does not destroy this present law. Other opponents to the bill were Bob Corette, Montana Power Company; Dan Misner, Cities and Towns; Jim Burnham, Mountain Bell; Les Loble, Montana-Dakota Utilities; John Potter, Newlan Water District; and John Morrison, MWAA-MAWAA. In closing, Representative Wolfe stated that he would agree with the Committee on any amendments they may have. He asked the Committee to retain the punitive interest rate. A brief discussion period followed with questions from the Committee.

ADJOURN: There being no further business Chairman Regan adjourned the meeting at 1:00 p.m.

Pat Regan, Chairman

FORM 4 A

INTER-DEPARTMENTAL MEMORANDUM

DEPARTMENT OF HIGHWAYS

To James R. Beck, Attorney

Date March 15, 1975

From Donald A. Douglas, Attorney

Subject H.B. 684
(Senate Committee Hearing)

This bill, if enacted into law, would seriously hinder acquisition and utilization of property acquired by eminent domain for public purposes. It would effect a broad spectrum of public and private entities, the State acting not only through the Department of Highways but also through the University System, Institutions, Fish and Game, Natural Resources and Aeronautics to name only a few of the principal acquiring agencies. Counties, municipalities, school, irrigation, water, sewer and lighting districts, airport boards, and other public and quasi public entities created for the discharge of a public duty or purpose would be hamstrung in their efforts.

In addition to the extended delays built into the bill, there is the incalculable increase in cost to the agencies charged with carrying out these public uses.

Turning to the bill itself, section by section the following may aid in evaluating its potential:

Sections 1 and 2 treat the excercise of eminent domain as a "privilege" rather than a "right" as it is now defined under existing law. In light of the Constitution's recognition of eminent domain as an inherent right of sovereignty, this change in wording does not appear to modify the essential character of the power.

Section 3 has now been amended to reflect the existing law on the time for filing answer in an eminent domain case.

Section 4 would deprive the people of Montana of the advantage of offsetting benefits conferred by improvements constructed at public expense. While such benefits are not too common in this Department's experience, they have and do occur. Some examples are (1) providing access to formerly isolated lands, (2) increase of highway frontage for commercial purposes, (3) improvement of access by bringing the highway to grade with abutting lands, (4) publicly constructed and maintained fencing. Other condemning entities may likewise provide benefits by their improvements, for example, a water storage project may take some hay land and result in a damage to the cattle carrying capacity of the remaining ownership from which the taking occurred. But such project may likewise create for the abutting owner valuable lakefront property out of grazing land.

You are well aware of the syndrome on interchanges of controlled access highways where adjoining $50 per acre grazing land is converted to $40,000 per acre service station sites.

It must be remembered in considering this section that under existing law the value of the benefits conferred may only be

offset against the damages to land not taken but adversely affected. These benefits may not diminish the just compensation for the land actually taken. Other states, Washington for example, permit benefits to be offset against both taking and damages.

Section 5 amends the existing law in several particulars. Initially the interest rate contemplated under existing law is trebled. If interest rates are in substantial part a measure of risk, it is difficult to justify such a high rate in the case of a solvent "debtor" such as this Department. Additional problems in this section are created by the failure to clarify certain terms. Under existing law the "full amount finally awarded" has not been expressly defined by Supreme Court opinion. What is included in that term under this bill? Value of land and improvements taken plus damage to remainder? That plus attorney fees and expenses of litigation? Both of those plus the payments to "defendant" for each day spent in court? All of the foregoing plus the "future damage" of Section 9?

This confusion is compounded, of course, by the fact that Section 7 of the bill would preclude delivery of possession (and the start of interest running) until the defendant "is paid in full". If the defendant be "paid in full", there remains no money owing to draw interest.

Section 6 of the bill in its present form creates a new right in the defendant unknown to existing law and practise. It contemplates litigation of the necessity for incorporating fences and cattle guards into the proposed improvement of the plaintiff. It is silent as to who shall make such determination, the court or the commission or the jury. It is silent as to the time for this determination, is it to be made at the necessity hearing level? the value hearing before commissioners? the jury trial?

The last sentence of Section 6 is an addition to the existing law although not so indicated in the form of the bill. This sentence opens a Pandora's box of problems. Initially, the use of the language "results from" rather than "caused by" indicates the intent to depart from the usual standards of proximate cause as a test for fixing tort liability. Mental anguish in the defendant may "result from" the plaintiff's failure to pay the sum of money assessed within thirty days after final judgment, but it is not "caused by" such failure in the sense that we know it in tort law. The plaintiff in a condemnation suit could be held liable for the death of a cow struck in a pasture by a drunk driver if a "necessary" fence would have stopped his vehicle. The principle of independent intervening cause as a defense to tort liability does not appear to be available in the instances contemplated by this section. The vagueness and uncertainty of this provision might well make the risks uninsurable at any reasonable cost.

In passing, note the title of the section of the Revised Codes which is not amended. This title speaks of "deposit of bond" for damages but the body of the section is amended to strike the only reference to a bond. Under the rules for statutory construction, we must try to give effect to the words used by the legislature. What effect can we give to the words "or deposit of bond therefor" which are in the proposed amended section? The language stricken from the existing law refers only to a bond for twice the assessed cost of fence and cattle guards. Does the section as it reads in the bill mean that now it is proposed to allow deposit of a bond as an alternative to payment of all the damages contemplated by this section?

Section 7 of the bill works the most serious potential detriment to the objectives of this Department as the legislature has heretofore created them. The first potential is, of course, the dramatic change in availability of the lands for the condemnor's purposes. Only by sacrifice of rights of appeal can the condemnor hope at all to procure property in a reasonable time, and then only if the landowners do not appeal. It is highly conceiveable that acquisition of possession under eminent domain could be transformed from the present maximum of a few weeks to a period of not less than a year or more. The "ripple" effect of such delay occasioned in the acquisition of a key portion of the property needed for an improvement could jeopardize not only the project of which it was a part but the entire system of which the project was a part. This is brought on by the effect of our Financial District Law and the several Federal Aid Highway Acts which provide for cooperative financing. As you are aware the coordination and long range programming of highway system improvement is now a complex and demanding task. Estimates of time for all phases of such planning could be made impossible by this bill. Estimates of right-of-way expenses for such planning could be equally affected, which brings up the second potential.

Increased cost is a necessary effect of Section 7. The Constitution and statutes now provide for the payment of defendants' litigation expenses only in the instance where the defendant secures an award in excess of the condemnor's offer of settlement. The proposed amendment (if presumed to be constitutional) would require payment of such expenses in all cases. The addition of compensation for a defendant's time spent in court could well amount to $50.00 per hour if measured by the rate of the State of Montana's highest paid Assistant Attorney General. Do multiple owners each receive the daily rate? In litigation other than condemnation, parties protecting their rights do not receive compensation for their time spent in court.

Section 8 of the bill imposes a further delay in utilization of condemned property contingent on the settlement of (presumably valid) tort claims. Avoidance of such delay could only be achieved by payment of claims and sacrifice of the right to contest the vali-

dity of such claims and the amount of damages. It is unclear in Section 8 whether this new legislation would or would not be limited to tort claims arising before a court order putting the condemnor in possession. I assume that it refers only to such claims arising before such order of possession, but if it were interpreted otherwise, repeated shut-downs could occur in the course of construction which would make orderly progress impossible.

If such shut-downs are occasioned by claims arising out of activity of the plaintiff or its agents, rather than the contractor, contract actions against the State under Section 83-601 et seq R.C.M. or settlement of claims thereunder could result. Shutting down a major construction project can be very expensive. The idling of millions of dollars worth of equipment, the loss of good construction weather and the necessity of making up lost time in poor weather, disruption of schedules and subcontractors and suppliers are only some of the itmes that generate such expense. You will recall that an alleged delay of some few weeks on a small part of one contract triggered a lawsuit by a contractor for $1.4 million.

Section 9 of the bill does not clearly limit liability to tort liability contemplated by our present Tort Claims Act. Nor does this section clearly limit liability to present standards for inverse condemnation. As it is a new section, presumably it treats something different than what is contemplated as depreciation by Section 93-9912, R.C.M. 1947. It speaks of "future" damages without saying "subsequent" to anything. Liability is imposed upon a condemnor for damage occurring as a result of certain use of the condemned land by parties connected with the condemnor. Interpreting the language used by resort to the common meaning of the words contained could lead to the conclusion that the State could be liable in damages to an "adjacent" defendant years later should a state contractor in another area accidentally damage property owned by a former condemnee "adjacent" to the highway. The vagueness of the language provides no limit to the possibilities and the effect is to make the State an insurer of its contractors on projects or activities wholly unrelated to the use of condemned lands. The fiscal impact is, of course, impossible to predict.

Section 10 of the bill is equally unclear. There is no standard in this section to measure distance eligibility for the contemplated compensation nor the type of damage eligible. The concept of "dammum absque injuria" may be destroyed. Diversion of traffic may become compensable. An entire community might become eligible for compensation.

In passing note that the title speaks of the "defendant property owner" and Section 10 confers new rights on non-defendants.

Section 11 of the bill purports to excuse the negligence of owners of property "adjacent" to condemned property should such negligence damage property of the condemnor. The owner of livestock in a herd district which might stray on to the grounds of a State institution and damage them need only buy a piece of land near a tract condemned by the State to escape future liability to the State. They are to be forever excused from liability for negligent damage to all of the condemning authority's property. They are to be excused from negligently setting fire to a state forest because a part of their neighbor's lands hundreds of miles away were once condemned for a state highway. The plain meaning of the words says they may. Does the buyer of the fee underlying an easement condemned by the State for an irrigation channel enjoy immunity from suit when he negligently damages a State vehicle? Generally, there arise throughout Section 9, 10 and 11 of the bill serious questions as to their constitutionality when tested under the equal protection clause. The treatment of an owner of land who is a defendant in a condemnation action is accorded to him solely because he is a defendant in such action. His neighbor may share that exalted status. There does not appear to be any rational basis for this special treatment as opposed, for example, to the treatment afforded an owner who voluntarily sells his land to an entity with the power of condemnation.

Should this bill become law, this Department has an alternative method of acquiring some right-of-way through eminent domain in cooperation with the Federal government. Congress has contemplated situations involving federally aided State projects where the delay in obtaining rights-of-way would necessitate resort to acquisition by the Federal government rather than the non-federal cooperation as is usual. In the case of the Department of Highways, as you are aware, some of our federally aided projects could be referred to the Federal Highway Administration for acquisition through Federal Court and under Federal procedures. In Federal acquisition, possession may be obtained upon deposit of the agency's estimate of just compensation and serving the landowners with the order obtained from the Federal judge at the time of the deposit. In my experience as an attorney in Federal condemnations and, I am advised by an attorney currently handling condemnation for the U.S. Department of Justice in Montana, presently the Federal judge usually appoints three commissioners, (at least one of whom must be a lawyer under Federal rules) to hear evidence and fix just compensation after the possession is granted to the condemnor. These commissioners are usually from outside the area of the project for which the land is sought. For example, on the Libby Dam Project in Lincoln County the commissioners were from Beaverhead, Ravalli and one other county far removed from Lincoln County. There is no appeal from the Judge's decision to have the value determined by commissioners. After the commissioner's file their report on damages,

the parties may have their report reviewed by the Judge, but the Judge may not grant a trial de novo on the question of damages before a jury. The Judge may find evidence to support their findings and that they were not arbitrary or capricious and sustain their findings. He may find error in their report and remand it to them with instructions for correction. The report, once accepted by the Judge, fixes just compensation. The Judge's decision may be appealed to the Circuit Court in San Francisco, but the Circuit Court's choices are limited to sustaining the local Judge or sending the case back with instructions, they cannot change the amount. The landowner gets neither attorney fees or other costs of litigation.

Because of the trememdous changes in existing law contemplated by this bill, repeated resort to our Supreme Court for interpretation should be anticipated in the event of its passage and approval. As you recall, over 83 years passed under the 1889 Constitution, and all of the questions on eminent domain were not answered. We are now in the midst of appeals under the 1972 Constitution. This bill, should it become law, could burden our Courts, both Federal and State, to a much greater extent.

Further, on the potential fiscal impact, it should be remembered that our Federal share of costs are based on the traditional concepts of just compensation and the Federal sources will not partipate in elements of compensation beyond those traditional concepts. For example, they provide no funds for interest payments, landowner attorney fees or costs of litigation, landowner court time payment, or payments to "other persons entitled to compensation." Should the assessment of compensation for traditional concepts be comingled with added elements, they will only participate in the amounts that we can demonstrate is based on traditional concepts. This, for all practical purposes, means the amount of State's appraisal approved by them before condemnation even though a jury may have based their verdict on the traditional concepts but on higher values for those traditional elements.

The acquisition of private property for public use presupposes the desirability of the project for which acquired. In the Department of Highways'case the legislature has mandated that an improved system of public highways be built and maintained. Essential to the discharge of this duty is the ability to acquire necessary private property at a reasonable cost, within a reasonable time and to reasonably predict the expense of operation and maintenance thereof. The changes wrought by H.B. 684 would result in hopeless conflict between the duty and the means permitted to discharge the duty. The changes would provide the machinery for a minority to stifle the desire of the majority for a public facility.

DAD:elm

Donald A. Douglas

March 17, 1975

MINUTES OF THE MEETING

BUSINESS AND INDUSTRY COMMITTEE

MONTANA STATE SENATE

The meeting of the Business and Industry Committee was called to order by Chairman Regan on the above date at 11:00 a.m. in room 404 of the State Capitol Building. The meeting was called to discuss House Joint Resolution 62.

ROLL CALL: All members of the Committee were present.

House Joint Resolution 62: Representative Richards, chief sponsor, presented the bill to the Committee. This bill would request the federal government's energy policy makers to consider the needs of the American people as well as the needs of energy supplying corporations. Representative Richards stressed the importance of this resolution and passed out a table on major oil company's involvement in eastern Montana. Representative Johnson, in support of the resolution, stated that this is one of the most important resolutions he has seen in the legislature this year. He stated that we do have an energy crisis but it has not affected the oil companies income. Companies in this country are clinging to politics like a spiders web. A good example of this is the campaign contributions in both parties. He urged the Committee to give serious consideration to this resolution. Sam Speery, Montana League of Conservation Voters, supported the resolution. He stated the President is funding all kinds of new developments in the country and we will be paying for them. The only need that is being satisfied is the companies and their profits. In closing, Representative Richards urged the Committee to give this resolution special consideration. A brief discussion period followed with questions from the Committee.

The Committee then took executive action on House Bills 424, 684, HJR 62, and House Bill 625.

House Bill 684: Senator Greely moved the bill be concurred in. As a substitute motion Senator Towe moved to strike everything but section 5 and to amend the bill back to its original form. On page 9 of section 5 following lawful insert "contract rate of." Substitute motion passed with Senators Greely and Devine voting no. Senator Towe moved the bill be concurred in as amended. All were in favor with Senators Greely and Devine voting no.

HJR 62: Senator Towe moved the bill be concurred in. As a substitute motion Senator Devine moved the bill do not pass. All were in favor of passage of the bill with Senator Devine voting no.

March 20, 1975

SENATE COMMITTEE ON BUSINESS AND INDUSTRY

AMENDMENTS TO HOUSE BILL NO. 684

That House Bill No. 684, third reading, be amended as follows:

1. Amend title, lines 10 through 14.
Following: "TO"
Strike: Lines 10 through 14 in their entirety
Insert: "interest paid in eminent domain proceedings; amending Section 93-9913, R.C.M. 1947."

2. Amend page 1, section 1, lines 17 through line 14 on page 8.
Strike: Sections 1 through 4 in their entirety
Renumber: Subsequent section

3. Amend page 9, section 5, line 5.
Followng: "~~lawful~~"
Strike: "AT THE RATE OF ONE AND ONE-HALF PERCENT (1 1/2%) PER MONTH"
Insert: "the highest lawful contract rate of"

4. Amend page 9, section 5, lines 8 and 9.
Following: "order to"
Insert: "the earlier of the following dates."

5. Amend page 9, section 5, line 10.
Following: line 9
Insert: "(a) The date on which the right to appeal to the Montana supreme Court expires, or if appeal is filed, to the date of final decision by the supreme court, or"

6. Amend page 9, section 5, line 13.
Following: line 12
Strike: "the"
Insert: "(b) The"

7. Amend page 9, section 5, line 13.
Following: "which"
Insert: "the property owner withdraws from court"

8. Amend page 9, section 5, lines 14 and 15.
Following: "awarded"
Strike: "IS AVAILABLE IN THE COURT TO BE WITHDRAWN BY THE DEFENDANT"

9. Amend page 9, section 5, line 19.
Following: "continue"
Insert: "to the earlier of the aforesaid dates defined in (a) and (b) of this section"

10. Amend page 9, section 5, line 21.
Following: "section"
Strike: "until the full amount is"
Insert: "withdrawn"

11. Amend page 9, section 5, lines 21 and 22.
Following: "withdrawn"
Strike: "AVAILABLE FOR WITHDRAWAL from the court"

12. Amend page 9, section 5, line 22.
Following: "court."
Insert: "None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Monta supreme court expires."

13. Amend page 10, section 6, lines 5 through line 12 on page 15.
Strike: Sections 6 through 11 in their entirety

March 25, 1975

SENATE COMMITTEE OF THE WHOLE

AMENDMENTS TO HOUSE BILL NO. 684

That House Bill No. 684, Senate Committee on Business and Industry Amendments, dated March 20, 1975, be amended as follows:

1. Amend amendment No. 3.
   Strike: Amendment No. 3 in its entirety

   Amend third reading copy as follows:

2. Amend page 9, section 5, line 5.
   Following: "~~lawful~~"
   Strike: "AT THE RATE OF ONE AND ONE-HALF PERCENT (1-1/2%) PER MONTH"
   Insert: "at the rate of ten percent (10%) per annum"

April 2, 1975

SENATE COMMITTEE OF THE WHOLE

AMENDMENTS TO HOUSE BILL NO. 684

That House Bill No. 684, third reading, be amended as follows:

1. Amend page 9, section 1, line 6.
   Following: "draw"
   Insert: "interest"

2. Amend page 9, section 1, line 9.
   Following: "annum"
   Strike: "interest"

3. Amend page 10, section 1, line 5.
   Following: "section"
   Insert: "until the full amount is"

4. Amend page 10, section 1, line 6.
   Following: "withdrawn"
   Insert: "from the court"

HOUSE BILL NO. 684

INTRODUCED BY WOLFE, PALMER, JACOBSEN, UNDERDAL, VINCENT, JACK MOORE, HARPER, BERTELSEN, GUNDERSON, LESTER, LUEBECK, THOMAS, SOUTH, SLOAN, SHELDEN, HAGEMAN, FLEMING, FEDERICO, MFLOY, JOHNSON, JAMES MOORE, ELLIS, FISHBAUGH, TRAVIS, STOLTZ, DUSSAULT, TROPILA, HALVORSON, FINLEY, STAIGMILLER, DRISCOLL, TEAGUE, KEMMIS, BRAND, MANUEL, FAGG, WILLIAMS, HELMBRECHT, R. BAETH, MAGONE, DASSINGER

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO ~~EMINENT DOMAIN--LAWS; --PROVIDING A MORE FAIR AND EQUITABLE METHOD OF TREATING THE DEFENDANT PROPERTY OWNER IN --SUCH --PROCEEDINGS; AMENDING---SECTIONS---93-9901,--93-9908,--93-9910,--93-9912, 93-9913,-93-9917,-AND-93-9920,-R.C.M.-1947~~ INTEREST PAID IN EMINENT DOMAIN PROCEEDINGS; AMENDING SECTION 93-9913, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1.--Section 93-9901, R.C.M. 1947, is amended to read as follows:~~

~~"93-9901.--Eminent domain defined.--Eminent--domain--is the--right--privilege--of the state to take private property for public use.--This right privilege may--be--exercised--in the manner provided in this chapter."~~

~~Section 2.--Section 93-9908, R.C.M. 1947, is amended to read as follows:~~

~~"93-9908.--The---complaint---and---its--contents.---The complaint must contain:~~

~~1.--The---name---of---the---corporation,---association, commission,--or person in charge of the public use for which the property is sought, who must be styled plaintiff.~~

~~2.-The names of all owners, mortgagees and--lienholders of record and any other claimants of the property of record, if--known, or a statement that they are unknown, who must be styled defendants.~~

~~3.-A statement of the right privilege of plaintiff.~~

~~4.-If a right of way is sought, the complaint must show the location,--general--route,--and--termini,--and--must--be accompanied--with--a--map--thereof,--so--far--as the same is involved in the action or proceeding.~~

~~5.-A description of each piece of--land--sought--to--be taken,--and--whether--the--same includes the whole or only a part of the entire parcel or tract.--All--parcels--lying--in the--county,--and--required--for the same public use, may be included in the same or separate proceedings, at the--option of--the plaintiff, but the court may consolidate or separate them--to--suit--the--convenience--of---the---parties.---When application--for--the condemnation of a right of way for the purposes of sewerage is made on behalf of a--settlement,--or town,--or--a--county, the county commissioners of the county~~

REFERENCE BILL
SECOND PRINTING 4/3/95

HB 0684/04

may be named as plaintiff.

6. If a sand, stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff, also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest, that the underground reservoir is suitable and practicable for natural gas storage, that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law, and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in section 60-804."

Section 3. Section 93-9910, R.C.M. 1947, is amended to read as follows:

"93-9910. Who may defend -- answer of defendant. All persons named in the complaint, in occupation of, or claiming an interest in, any of the property described in

the complaint, or in the amount to be awarded for the taking thereof, though not named, may appear. The answer of each appearing defendant must be filed and served upon the plaintiff, or upon any attorney for plaintiff, within a period of fifteen (15) twenty (20) ~~FIFTEEN (15)~~ days after the service of summons and complaint. The answer of each appearing defendant must contain a specific allegation as to the total amount which such defendant claims is reasonable and just for the taking of such defendant's lands or other real property or interest therein."

Section 4. Section 93-9912, R.C.M. 1947, is amended to read as follows:

"93-9912. Appointment and meeting of commissioners. Immediately upon making and entering the preliminary condemnation order the judge must meet with the respective parties, or their attorneys of record, for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The court must thereupon appoint three (3) qualified, disinterested condemnation commissioners. One of such commissioners shall be nominated by the party or parties plaintiff, one of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and

shall be nominated by the two (2) commissioners previously nominated, provided, however, that if said two (2) commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge. Each commissioner shall possess the following qualifications: a citizen of the United States and over eighteen (18) years of age, that he is not more than seventy (70) years of age, that he is in possession of natural faculties, of ordinary intelligence and not decrepit, that he is possessed of sufficient knowledge of the English language, that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending, that he has not been convicted of malfeasance in office, or any felony or other high crime, that he is not related within the sixth degree to any party, that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent, or partner or surety as to any party. At the time of such meeting and nominations there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows: that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants, and that he has no

enmity against or bias in favor of any party and has not discussed, communicated or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded or to be awarded, that if selected as a condemnation commissioner he is willing to serve and will well and truly try the issues of compensation and a true decision render according to the evidence and in compliance with the instructions of the court, that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

Immediately upon such nomination and appointment of commissioners the same shall proceed to meet at the time and place stated in the order appointing them, which time shall be not more than ten (10) days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within said ten (10) day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land. Such hearing shall be attended by, and presided over by, the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence. At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct

them--that-their-duty-is-to-determine,-solely-upon-the-basis of-said-examination-of-lands,-the-evidence-produced--at--the hearing--or--hearings-and-the-instructions-of-the-court,-the following:

1.--The-value-of-the-property-sought-to-be-appropriated and-all-improvements-thereon-pertaining-to-the--realty,--and of--each--and-every-separate-estate-and-interest-therein,-if it-consist-of-different-parcels,-the-value--of--each--parcel and--each--estate--or--interest--therein--must-be-separately assessed;

2.--If--the--property---sought---to---be---appropriated constitutes-only-a-part-of-a-larger-parcel,-the-depreciation in--value--which-will-accrue-to-the-portion-not-sought-to-be condemned,-by-reason--of--its--severance--from--the--portion sought---to--be--condemned,--and--the--construction--of--the improvements-in-the-manner-proposed-by-the-plaintiff;

3.-Separately,-how-much-the-portion-not--sought--to--be condemned,--and--each--estate--or--interest-therein,-will-be benefited,--if--at--all,--by---the---construction---of---the improvements--proposed--by-the-plaintiff,-and-if-the-benefit shall-be-equal-to-the-amount-assessed-under--subdivision--2, the--owner--of--the--parcel-shall-be-allowed-no-compensation except-the-value-of-the-portion-taken,-but-if--the--benefits shall--be-less-than-the-amount-assessed-under-subdivision-2, the-former-shall--be--deducted--from--the--latter,--and--the

remainder--shall--be--the-only-amount-allowed-in-addition-to the-value;

4.--If-the-property-sought-to-be-condemned--be--for--a railroad,--the--cost-of-good-and-sufficient-fences-along-the line-of-such-railroad,-and-the-cost-of-cattle--guards--where fences-may-cross-the-line-of-such-railroad;

5.--Where-there-are-two-(2)-or-more-estates-or-divided interests--in-property-sought-to-be-condemned,-the-plaintiff is-entitled-to-have--the--amount--of--the--award,--for--said property---first--determined,--as--hereinbefore--stated,--as between-plaintiff-and-all-defendants-claiming-any--interests therein,--thereafter--in--the-same-proceeding-the-respective rights-of-each-of-such-defendants-in-and-to-the-award--shall be--determined--by--the-commissioners,-under-supervision-and instruction--of--the--court,--and--the---award---apportioned accordingly."

Section 1. Section 93-9913, R.C.M. 1947, is amended to read as follows:

"93-9913. The date with respect to which compensation shall be assessed. For the purpose of assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in value of property not actually taken, but injuriously

affected. This shall not be construed to limit the amount of compensation payable by the department of highways under the provisions of any legislation enacted pursuant to the Federal Highway Beautification Act of 1965. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw ~~the highest lawful AT THE RATE OF ONE AND ONE HALF PERCENT (1 1/2%) PER MONTH THE HIGHEST LAWFUL CONTRACT RATE OF~~ INTEREST AT THE RATE OF TEN PERCENT (10%) PER ANNUM ~~interest~~ from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to ~~the earlier of the following dates:~~ THE EARLIER OF THE FOLLOWING DATES.

~~(a) The date on which the right to appeal to the Montana supreme court expires, or if appeal is filed, to the date of final decision by the supreme court, or~~

(A) THE DATE ON WHICH THE RIGHT TO APPEAL TO THE MONTANA SUPREME COURT EXPIRES, OR IF APPEAL IS FILED, TO THE DATE OF FINAL DECISION BY THE SUPREME COURT, OR

~~(b) The~~ (B) THE date on which ~~the property owner withdraws from court~~ THE PROPERTY OWNER WITHDRAWS FROM COURT the full amount finally awarded ~~IS AVAILABLE IN THE COURT TO BE WITHDRAWN BY THE DEFENDANT~~.

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction

shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue ~~to the earlier of the aforesaid dates defined in (a) and (b) of this section~~ TO THE EARLIER OF THE AFORESAID DATES DEFINED IN (A) AND (B) OF THIS SECTION ~~until the full amount is withdrawn~~ UNTIL THE FULL AMOUNT IS WITHDRAWN ~~AVAILABLE FOR WITHDRAWAL from the court~~. ~~None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires.~~ FROM THE COURT NONE OF THE AMOUNT FINALLY AWARDED SHALL DRAW INTEREST AFTER THE DATE ON WHICH THE RIGHT TO APPEAL TO THE MONTANA SUPREME COURT EXPIRES. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation."

~~Section 6. Section 93-9917, R.C.M. 1947, is amended to read as follows:~~

~~"93-9917. Payment of damages or deposit of bond therefor. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed, but may, at the time of or before the payment, elect to build the fences and cattle guards, and, if he so elect, shall execute to the defendant a bond, with sureties to be approved by the court, in double the assessed cost of the same, to build such~~

fences and cattle guards within eight months from the time the railroad is built on the land taken, and, if such bond be given, need not pay the cost of such fences and cattle guards. In an action on such bond, the plaintiff may recover reasonable attorney's fees. All fences and cattle guards NECESSITATED BY THE CONDEMNATION ACTION, shall be built AS SOON AS FEASIBLE, and maintained by plaintiff at his own expense. Damage occurring to any person or property that results from plaintiff's failure to comply with this section shall be paid by plaintiff to the injured person, or owner of the damaged property."

Section 7. Section 93-9920, R.C.M. 1947, is amended to read as follows:

"93-9920. Putting plaintiff in possession. At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court, and either before or after appeal from such assessment, or from any other order or judgment in the proceedings, the court or any judge thereof at chambers, upon application of the plaintiff, shall have power to make an order that upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer or the amount assessed, either by the commissioners or by the jury, as the case may be, the plaintiff be authorized, if already in

possession of the property of such defendant sought to be appropriated, to continue in such possession, or, if not in possession, that the plaintiff be authorized to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation, and that all actions and proceedings against the plaintiff on account thereof be stayed until such time, provided, however, that where an appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff, before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking, with sufficient sureties, to be approved by the judge and to be in such sum as the court or judge may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public use.

The amount assessed by the commissioners, or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated, but the

plaintiff, by payment into court of the amount claimed in the answer or the amount assessed, or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment, but may appeal in the same manner and with the same effect as if no money had been deposited or security given; and in all cases where the plaintiff deposits the amount of the assessment and continues in possession, or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court, all or any part of the money so deposited, and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment, but may, notwithstanding, take and prosecute his appeal from such assessment, provided, that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action, and, provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount

than that assessed by the commissioners, and provided, further, that the court shall not order the delivery to any defendant of more than seventy-five (75) per cent of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of seventy-five (75) per cent, with sureties to be approved by the court, to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings. Plaintiff shall NEED not be put in possession until final determination of value of condemnation is made and defendant is paid in full, including all expenses of litigation. Litigation expenses for both parties shall be paid by plaintiff. Defendant is entitled to payment for each day spent in court in an amount equal to the daily rate of the highest paid person in plaintiff's organization."

Section 8. There is a new R.C.M. section numbered 93-9945 that reads as follows:

"93-9945. Property damage. All claims for damage to property of defendant or defendant's agents, tenants, lessees, or other persons with an interest in defendant's property by plaintiff or plaintiff's agents or contractors shall be paid in full before plaintiff may utilize the condemned property for any use. Interest at the rate of one and one-half percent (1 1/2%) per month shall accrue to the damaged party from thirty (30) days after the date of

damage.

Section 9. There is a new R.C.M. section numbered 93-9946 that reads as follows:

93-9946. Future damage to defendant's adjacent property. Plaintiff is liable to defendant for damage to defendant's real or personal ADJACENT property which occurs as the result of an action by plaintiff, or an agent, contractor or servant of plaintiff in utilizing the condemned land.

Section 10. There is a new R.C.M. section numbered 93-9947 that reads as follows:

93-9947. Other persons entitled to compensation. A person, not defendant, owning property within a reasonable distance of the property condemned under eminent domain who suffers damages to realty or personalty as a result of plaintiff's use of the condemned property is entitled to compensation for that damage.

Section 11. There is a new R.C.M. section numbered 93-9948 that reads as follows:

93-9948. Nonliability. The owner of PROPERTY ADJACENT TO condemned property, his agents and assigns are not liable at any time for their acts which result in damage to the condemning parties' property unless those acts are willful, wanton, or intentional.

-End-